
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Frank Kluz
Lancaster, Ohio

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File No. EB-02-DT-610

NAL/Acct. No. 200232360008

FRN: 0007-4207-22

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: July 23, 2002

By the District Director, Detroit Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Frank Kluz, Lancaster, Ohio, has apparently violated Section 95.411 of the Commission's Rules ("Rules")¹ by using an external radio frequency power amplifier ("linear amplifier") as part of his Citizens Band Radio ("CB") station. We conclude that Frank Kluz is apparently liable for a forfeiture in the amount of five thousand dollars (\$5,000).

II. BACKGROUND

2. On June 22, 2001, the City of Lancaster, Ohio, Office of the Law Director and City Prosecutor Office, sent a complaint letter to the FCC Enforcement Bureau's Detroit Office. The complaint concerned interference to neighborhood home electronic entertainment devices caused by the operation of a CB radio station operated by Mr. Kluz.

3. On July 19, 2001, the Detroit Office sent a Quiet Hours letter to Mr. Kluz. The letter directed him, his family, and any guests visiting him, not to operate any base or mobile radio transmitter from his property or adjacent roadways from the time the letter was received. The letter also directed him to contact the Detroit Office to make arrangements for an inspection of his radio facility.

4. On October 16, 2001, the City of Lancaster, Ohio, Office of the Law Director and City Prosecutor Office sent a second complaint letter to the FCC Enforcement Bureau's Detroit Office. The complaint indicated that Mr. Kluz's CB radio transmissions continued to cause interference to neighborhood telephones, radios and television sets, thereby, violating the Quiet Hours letter.

5. On October 31, 2001, an agent from the Detroit Office monitored for transmissions from Mr. Kluz's CB station but none were observed. The agent went to 245 Talmadge Avenue, Lancaster, Ohio, the address stated in the complaints as Mr. Kluz's residence. The agent inspected Mr. Kluz's CB station and found it to be in compliance with FCC CB rules and regulations. As a result, the Detroit Office sent a letter on November 14, 2001 releasing him from the conditions that had been imposed on his CB station by the Quiet Hours letter.

6. On January 21, 2002, the Office of Congressman David L. Hobson referred a complaint

¹ 47 C.F.R. § 95.411 [CB Rule 11].

from his constituents regarding interference to telephones and home electronic equipment caused by Mr. Kluz's CB radio station. This correspondence was forwarded to the Enforcement Bureau headquarters for tracking purposes and official response.

7. On June 10, 2002, the FCC Enforcement Bureau's Detroit Office received a complaint letter from a resident in Lancaster, Ohio. The complaint alleged interference to neighborhood home electronic entertainment devices from Mr. Kluz's CB radio station.

8. On June 25, 2002, agents from the Detroit Office monitored CB transmissions on 27.185 MHz (CB Channel 19) and positively identified the source of the transmissions at 8:26 p.m. as emanating from 245 Talmadge, Lancaster, Ohio. After identifying the source of the transmissions, the agents then proceeded to the residence and spoke with Mr. Kluz. Upon inspection of his CB radio station, the agents observed a Palomar TX-200B linear amplifier attached to his CB transceiver. Mr. Kluz indicated that he had obtained the linear amplifier, from a friend, two days earlier and was checking it out for his friend. Measurements taken by the agents indicated that the linear amplifier had an output power that ranged from 12.5 watts to 75 watts.

III. DISCUSSION

9. Section 95.411 of the Rules prohibits attaching a power amplifier to a CB transmitter in any way. Furthermore, pursuant to Section 95.411(c) of the Rules², there is a presumption that a linear or other external RF power amplifier has been used if it is found in the possession of, or on the premises of, the CB radio station and there is other evidence that the CB station was operated with more power than allowed by the Rules. In this case, Mr. Kluz's CB radio station was positively identified operating immediately prior to the inspection and the inspection revealed that his station consisted of a CB transceiver with an attached linear amplifier and power indicator meter. Other evidence of overpower operation includes complaints of interference to neighborhood electronic devices the Detroit Office received regarding his CB operation, and his admission that he operated his CB radio with the linear amplifier attached.

10. Based on the evidence before us, we find that Frank Kluz willfully³ violated Section 95.411 by having a linear amplifier in line at his CB station. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303(1999) ("*Forfeiture Policy Statement*")⁴, sets the base forfeiture amount at \$5,000 for the use of unauthorized equipment. In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934,⁵ as amended, ("Act"), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Considering the entire record, applying the *Forfeiture Policy Statement* and the statutory factors to the instant case and applying the inflation adjustments, we believe that a five thousand dollar (\$5,000) monetary forfeiture is warranted.

² 47 C.F.R. § 95.411(c) [CB Rule 11].

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁴ 47 C.F.R. § 1.80.

⁵ 47 U.S.C. § 503(b)(2)(D).

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act⁶ and Sections 0.111, 0.311 and 1.80 of the Rules⁷, Frank Kluz is hereby NOTIFIED of his APPARENT LIABILITY FOR A FORFEITURE in the amount of five thousand dollars (\$5,000) for willful violation of Section 95.411 of the Rules.

12. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Frank Kluz SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200232360008, FRN: 0007-4207-22.

14. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and MUST INCLUDE the NAL/Acct. No. 200232360008, FRN: 0007-4207-22.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Federal Communications Commission, Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁸

17. IT IS FURTHER ORDERED THAT THIS NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail, Return Receipt Requested, to Mr. Frank Kluz, 245 Talmadge Avenue, Lancaster, Ohio 43130.

FEDERAL COMMUNICATIONS COMMISSION

James A. Bridgewater
District Director
Detroit Office, Enforcement Bureau

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. §§ 0.111, and 0.311.

⁸ See 47 C.F.R. § 1.1914.